From:	Tomer Toor <Tomer@fwmk-law.co.il>
To:	ehbarak1@gmail.com
CC:	Udi Knaani <Udi@fwmk-law.co.il>
Date:	Thu, 1/22/2015 4:04:41 PM
Subject:	FW: Darren's response

Dear Ehud,
Below please find our corresponding response to Darren's comments.

In general it should be noted that the first terms sheet we presented to the other party, included several uncommon issues that were greatly benefit with the Investor and that are far better than the standard.
This was made knowingly and intentionally, so that as part of the negotiation we could present some compromises as act of good faith and still end with a relatively very good terms of investment from Investor's perspective. From our experience in many similar transactions, and comparing recent trends, statistic and common practice, we believe that in many aspects of the recent terms sheet, it still exceed the standard.

Also, with respect to gaining control in the Company by EB –
We played with the updated cap table (which we can send you separately later) – if you considering the 10% of options to employees as non-voted shares (they are issued with proxy and not voted by the employees), you will gain your required majority if exercising the Warrants in the first two years - event with the higher PPS of the investment and the Warrants.
Finally, please note that even without the exercising the Warrants, if the founders will lose their majority in the share capital, whether due to external investment or otherwise (subject to EB's pre-emptive, etc.), EB will automatically gain control in the Board and will be entitled to have 3 out of 5 board members.

Tomer

F·W·M·K
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From: ehbarak [mailto:ehbarak1@gmail.com]
Sent: Thursday, January 22, 2015 6:05 AM
To: Udi Knaani; Tomer Toor
Subject: Fwd: Darren's response

Hi Udi
Pl call me after you've read it.
EB

Sent from my iPhone

Date: January 22, 2015 at 02:31:59 GMT+2
To: ehud barak <ehbarak1@gmail.com>

1. Pre-money valuation was estimated at $3,338,710, and $1.5MM investment was intended to be 31% of Company on a fully diluted basis. Now $1.5MM buys 25% on a fully diluted basis based on a $4.5 MM company valuation. However, to get EB up to 31% he is being offered up to 6% of ordinary shares for serving as director. The 6 percent vests in 8 equal quarterly installments over 2 years. However, by doing it this way, I believe the warrant exercise prices which are based on a percentage of the original purchase price per share will start at a higher exercise price per share.

> Indeed this is correct. When splitting the 31% to purchased shares and EB's options, you would get a higher original issue price and thus higher price for the warrants. Since this term was the basic commercial agreement with Ehud we needed to accept it. However, we did insist to get the warrants in an exceptionally large amount ($3.5M).

2. Regarding warrant exercise prices, you may recall that in the last iteration of the term sheet, the investor was to be given two sets of warrants: one set of $1MM worth of warrants exercisable at any time over a 4 year period at 150% of the purchase price per share of the preferred shares in this investment; and the second set of $2.5MM of warrants exercisable at any time over a 4 year period at 175% of the purchase price per share of the preferred shares in this investment. Now this has been changed so that only for the 1st two years of the 4 year exercise period are the warrants exercisable at 150% and 175% of the purchase price per share, respectively. In the third year the exercise prices increase to 195% and 225%, respectively, of the original purchase price per share, and in the fourth year, the exercise prices increase to 240% and 275%, respectively of the purchase price per share. If the original intent was for the warrants to enable EB to acquire a majority interest of the Company, with the increase in the original purchase price per share, while the aggregate dollar amount that may be exercised remains the same, even with a full exercise of all $3.5 MM of warrants in the first two years (i.e., with an exercise price at 150% and 175% of the purchase price per share), it does not appear that EB will acquire a majority interest. He certainly won't when the exercise prices are increased in years 3 and 4 of the warrant exercise period.

> Again, the analysis above is pretty accurate but it should be noted that to begin with, we asked for a considerably large amount of warrants not in proportion to the original

> investment. To justify these warrants, we argued that it is the Investor's intention to continuing and increase its investment in the Company. Such intention sounds reasonable in the first – two years but less relevant later. Accordingly and in order not to compromise on the terms of the first two years we were willing to raise the price at later phase.
>
> Finally, if you considering the 10% of options to employees as non-voted shares, we still believe that the warrants will enable EB the required majority.

3. There is a note that is deleted about there being a finders fee payable to Echar Erez under which he was supposed to receive cash in the amount of 2.5% of the investment amount, plus options for 2.5% of the investment shares. Although the note was deleted, I wonder whether that fee is being paid somewhere.

> The commitment to the said finder still exists. We stated that the options of 2.5% shall be counted on the fully diluted basis pre-investment and therefore will be given from founders' shares, not Investor's.

4. They put a time limit of 2 years on price anti-dilution. They also changed the description of the price anti-dilution from broad based weighted average to narrow based weighted average.

> Please note correction – the said time limit of 2 years is only for anti-diluted protection of 'full-ratchet', thereafter it becomes narrow based (which is better to the Investor then 'broad based') weighted average, without any time limit. Both type of protection and in particular 'full ratchet' mechanism, exceed any standard anti-diluted protection in the recent years.

5. Whereas previously any deemed liquidation event would require EB approval, now only liquidation events where EB would receive less than 400% of his investment require EB approval.

> Correct. This is very common and almost a standard to waive the said veto right if the Investor already receive X times the investment. We may continue to insist on this issue but it would be hard to argue and somewhat unusual.

6. Whereas budget variations required EB approval now only if the budget varies by 10% in any given month (and not in the aggregate) would prior approval be required.

> This is very common and standard and in many cases the variations allowed are larger than 10%. It will be very hard (and mostly not really needed by Investor) that the Company shall need to obtain the Investor's consent for every minor deviation from the already approved budget.

7. incurring any single debt of $100K or more would require EB approval. Obviously this can be avoided with a series of separate debt transactions.

> This will still be subject to the veto rights for deviation from the budget, so we believe that there is no real issue here.

8. Financial reporting that was unaudited monthly reports 15 days after the end of every month, unaudited quarterly financials 45 days after end of each of the first, second and third quarters and audited annual financials 60 days after the fiscal year end has been changed to 30 days for monthly reports, 60 days for unaudited quarterly financials and 90 days for audited annual financials.

> We originally asked for reduced time periods just to get to the above intervals. The time periods are reasonable and widely common (except if the investor must have the reports urgently and in shorter periods, for example if the investor is publicly traded entity).

9. Auto conversion of the ordinary shares was originally to take place if the Company netted $10MM in an IPO at a pre-money valuation of the Company of at least $50MM. Those numbers have now been changed to auto conversion upon the company netting $30MM in an IPO at a pre-money valuation of at least $100MM.

> These changes are to the benefit of the Investor. They actually asked to reduce the bar and we insisted that only at higher IPOs should we need to automatically converts Investor's shares.

10. The term sheet originally provided that founders could not sell any of their holdings until the earlier of the expiration of four years, a qualified IPO or a Deemed Liquidation of the Company. The revised term sheet allows the Founders after two years to sell their holdings until they receive $300,000, but each of the Founders may not sell more than 10% of his or her holdings. Any such transfers will be subject to

the right of first refusal of each 5% shareholder to purchase a pro rata portion of the shares to be sold by the Founder, but such transfers will not be subject to the EB's tag along rights.

> These terms here (of no-sale for 2 years and then allowed sale of up to $300K per founder) are much better than the standard known in this matter.

DARREN K. INDYKE

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